



WEB COPY



W.P.No.8129 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.8129 of 2021

and

W.M.P.Nos.8696 and 8697 of 2021

M/s.M-ARC Constructions,
A partnership firm represented by its
Managing Partner K.Mani,
S.F.No. 520, Adhava Department,
Sabthagiri Nagar,
Hosur – 635 109.
Krishnagiri District.

...Petitioner

-Vs-

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai – 600 035.
2. The Chief Engineer,
TamilNadu Housing Board,
Salem Division,
Salem.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Hosur Division, Bagalur Road,
Hosur – 635 109.
4. The Manager, Marketing & Service,
Tamil Nadu Housing Board,
Hosur Housing Unit, Bagalur Road,
Hosur – 635 109.

...Respondents



W.P.No.8129 of 2021

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the letter No.HR-11/1384/2019 dated 26.02.2021 issued by the 4th respondent, quash the same, consequently direct the respondents herein to confirm the sale and execute Sale Deed in respect of the shop site No.142-B, Phase-X, Hosur after receiving the balance Bid amount within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.R.Murali
For Respondents : Mr.D.Veerasekaran
Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the fourth respondent, thereby rejected the proposal of shop site No.142-B, Phase-X, Hosur, on the ground that the amount is not competitive.

2. Heard the learned counsel on either side and perused the materials available on record.

3. On 16.09.2020, the respondents called for sealed tenders to sell the commercial sites, shop sites, nursery school sites and various other categories through public auction in Hosur Housing Scheme. The petitioner was interested to purchase a shop bearing No.142-B, Hosur Project Phase-X. The said shop



W.P.No.8129 of 2021

site is having an extent of 24,198 sqft. The respondents fixed the upset price of Rs.4,35,57,000/-. The petitioner made an application for the said shop along with requisite EMD of Rs.65,50,000/-, which is equivalent to 15% of upset price by way of Demand Drafts dated 15.10.2020. The open auction was conducted in the office of the third respondent on 19.10.2020 and six members participated in the said auction. The petitioner was declared as highest bidder of the amount of Rs.9 Crores. As per the terms and conditions of auction, the petitioner has to pay 25% of highest bid amount viz., 2,25,00,000/-, on 20.10.2020, on the next day of auction, otherwise the allotment made in auction would be cancelled and the amount paid by way of EMD would also be forfeited. Accordingly, the petitioner had paid the said amount with the respondents. While being so, after a period of four months, the fourth respondent cancelled the bid submitted by the petitioner. Hence, this writ petition.

4. The learned counsel for the petitioner would submit that admittedly, the petitioner is the highest bidder of the amount of Rs.9 Crores, which is at the rate of Rs.3719/- per sq.ft and it is almost 106% higher than the upset price collected by the respondents. He further submitted that without prior notice and



W.P.No.8129 of 2021

without any opportunity of hearing to the petitioner, all of a sudden, the fourth respondent cancelled the bid and taking steps for fresh auction. The respondents had constituted a Committee consisting of various higher officials for fixing the upset price for the subject property by considering various aspects like prevailing sale price in the year 2020 including sale price of a plot No.52A of Phase X. Therefore, the respondents are estopped from contenting that the offer made by the petitioner is not competitive sale price and moreover the offer made by the petitioner is higher than 106% of the upset price fixed by the respondents.

5. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2021 19 SCC 706** in the case of ***State of Uttar Pradesh Vs Sudhir Kumar Singh and others***, wherein it was held as follows:-

“ 42. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.



W.P.No.8129 of 2021

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non observance of natural justice.”

6. The respondents filed counter and the learned Standing Counsel for the respondents submitted that as per the terms and conditions of sale mentioned in the application form itself is clear that the auction sale is subject to the confirmation of Auction Sale Confirmation Committee of the Board. The payment of 15% of the bid amount is only to ensure earnestness on the part of



W.P.No.8129 of 2021

the bidder and it will not confer any right on him/her to claim confirmation of the sale. If the sale is not confirmed, the application money and 15% of the bid amount paid by him/her will be refunded without interest. Further stipulates a condition that the Auction Sale Confirmation Committee of the Board reserves the rights to confirm or to reject the auction sale without assigning any reasons there for.

7. Therefore, the petitioner categorically agreed to those conditions of sale at the time of making application. As per the terms and conditions, the auction sale is subject to the confirmation of Auction Sale Confirmation Committee. The Sale Confirmation Committee had gone through each and every proposal of the Executive Engineer and Administrative Officer of various Divisions/Units Officers before accepting the bid with a view of protecting financial and other interests of the Board. Further, the Committee is fully empowered to accept or reject the bid taking into consideration various factors including the financial and other interests of the Board.

8. That apart, the petitioner cannot claim confirmation of the bid in the open auction sale, as a matter of right as the final decision to accept or reject



W.P.No.8129 of 2021

the offer vests with the Sales Confirmation Committee. Now, the Sale Confirmation Committee decided not to confirm the offer made by the petitioner for the reason that it is not a competitive bid by taking into various consideration of the comparable sale rate of shop site No.52-A of the same scheme.

9. The learned Standing Counsel appearing for the respondents relied upon the Judgment of the First Bench of this Court in ***W.A.No.2791 of 2022*** in the case of ***The Tamil Nadu Housing Board represented by its Managing Directors and others Vs M.Vishnukumar and Another***, in which this Court held as follows:-

“ 8. The facts of the present case will have to be considered on the touch stone of the aforesaid principle.

9. It is not disputed that the appellant/Housing Board had called for quotation for sale of its various plots. The first respondent/writ petitioner had bid for a plot in Kovaipudur scheme. The upset price as per the sales confirmation committee was Rs.9,36,67,000/- and the highest bid amount was Rs.9,41,00,000/-.

10. The terms and conditions of sale would also be relevant to be considered.

11. Clauses 10, 11, 26 of the terms and conditions of sale, read thus:

“Clause 10 : The auction sale is subject to the confirmation



of the auction Sale Confirmation Committee of the Board. The payment of 15% of the bid amount is only to ensure earnestness on the part of the bidder and it will not confer any right on him/her to claim confirmation of the sale. If the sale is not confirmed, the application money and 15% of the bid amount paid by him/her will be refunded without interest.

Clause 11 : The Auction Sale Confirmation Committee of the Board reserves the right to confirm or to reject the auction sale without assigning any reasons therefor.

Clause 26 : Single tender will not be entertained.”

12. Clause 10 of the terms and conditions of sale is explicit. The auctionsale is subject to the confirmation of the auction Sale Confirmation Committee of the Housing Board. The payment of 15% of the bid amount is only to ensure earnestness on the part of the bidder and it will not confer any right on him/her to claim confirmation of the same. If the sale is not confirmed, the application money and 15% of the bid amount will be refunded without interest. Clause 26 further states that single tender will not be entertained.

13. In the present case, Auction Sale Confirmation Committee did not confirm the sale; on the contrary, took a decision not to confirm the sale and proceed further to re-auction the plot, so as to fetch more revenue to the Housing Board.

14. In view of clause 10 of the terms and conditions of sale, as produced supra, the contention of the first respondent/writ petitioner that he was directed to deposit 15% amount and as such, that amounts to implied contract, cannot be sustained. The 15% of the bid amount is only to ensure earnestness on the part of the bidder and nothing more. The deposit of 15% would not create a vested right in favour of the first respondent/writ petitioner; nor it can be said that the sale stands concluded. No jural relationship is created only on account of deposit of 15% of the amount.

15. One of the grounds of challenge was that the order cancelling the sale was without reasons. In matters of contract, it



is not expected that the reasons should always be stated. Reliance can be had to the Judgment of the Supreme Court in the case of Silppi Constructions vs. Union of India, (2020) 16 SCC 489. The learned single Judge while dealing with the matter has not considered the aforesaid aspects.

16. The other aspect is also not irrelevant. Only two bids were received. However, the second bidder did not even deposit the earnest money deposit. As such, he stood disqualified and only one tender remained to be considered. Clause 26 of the terms and conditions of sale is explicit. It states that the single tender will not be entertained. On this count also, the appellant/Housing Board would be justified in not proceeding with the sale and taking a decision to reauction the said plot.

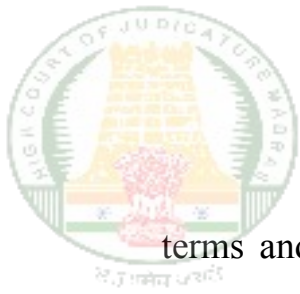
17. For all the aforesaid reasons, it does not appear that the action of the appellant/Housing Board smacks of arbitrariness.

18. It is to safeguard the revenue, or to fetch more revenue for the appellant/Housing Board, decision has been taken in tune with the terms and conditions of the sale.

19. It also needs to be considered that the object of inviting tenders is to procure the highest price. The procurement of the highest price is in public interest. And it is for the same reason that a clause is inserted in the terms and conditions of sale that single tender will not be entertained.

20. In light of all the above said facts and circumstances, the judgment of the learned single Judge is quashed and set aside. The appeal is allowed. There will be no order as to costs. Consequently, CMP Nos.22673 and 22984 of 2022 are closed."

10. Thus, it is clear that in order to safeguard the revenue, or to fetch more revenue for the respondents, decision has been taken in tune with the



W.P.No.8129 of 2021

terms and conditions of the sale. Further, the object of inviting tenders is to procure the highest price. The procurement of the highest price is in public interest. Therefore, a specific clause has been inserted in the terms and conditions of the sale. Therefore, the petitioner does not require any opportunity of hearing before the cancellation of tender, since it is part of the terms and conditions of the sale.

11. In view of the above, this Court finds no infirmity or illegality in the order passed by fourth respondent in letter No.HR-11/1384/2019 dated 26.02.2021 and the writ petition is devoid of merits and is liable to be dismissed. The third respondent is directed to refund the amount which was deposited by the petitioner, forthwith. It is also made clear that the petitioner is at liberty to participate in the re-auction on the subject property.

12. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

18.04.2024

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

mn



WEB COPY



W.P.No.8129 of 2021

To

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai – 600 035.
2. The Chief Engineer,
Tamil Nadu Housing Board,
Salem Division,
Salem.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Hosur Division, Bagalur Road,
Hosur – 635 109.
4. The Manager, Marketing & Service,
Tamil Nadu Housing Board,
Hosur Housing Unit, Bagalur Road,
Hosur – 635 109.



WEB COPY



W.P.No.8129 of 2021

G.K.ILANTHIRAIYAN. J,

mn

W.P.No.8129 of 2021

18.04.2024